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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/071,930	02/08/2002	Kevin A. Mansmann	KM-FLEX-1	1835

7590

07/10/2003

Patrick D. Kelly  
11939 Manchester #403  
St. Louis, MO 63131

EXAMINER

GILPIN, CRYSTAL M

ART UNIT	PAPER NUMBER
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3738

DATE MAILED: 07/10/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

N.K.

# Office Action Summary

Application No.

10/071,930

Applicant(s)

MANSMANN, KEVIN A.

Examiner

Crystal M Gilpin

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_ 6) ☐ Other: \_\_\_\_\_

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## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1, 2, 10 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by

Oka et al. (USPN 5,314,478).

Regarding claims 1 and 2, Oka et al. disclose a flexible surgical implant for repairing damaged cartilage in a joint, comprising an anchoring portion (Figure 2, Reference Number 1) with at least one anchoring protrusion (Figure 1, Reference Number 4), and a lubricious (Column 3, Line 67) bearing surface (Figure 1, Reference Letter g). Oka et al. further teach that the implant is made of a hydrogel (Column 3, Lines 23-26) and promotes tissue ingrowth (Column 3, Lines 28-29).

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 3-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oka et al. (USPN 5,314,478) in view of Wall (USPN 4,502,161).

Regarding claims 3-6, Oka et al. teach of an implant for the repair of cartilage with an anchoring protrusion, however they lack the teaching of a plurality of anchoring protrusions including anchoring pins. Wall teaches of a prosthetic for the repair of joints that include embodiments with multiple anchoring protrusions (Figures 4 and 9) to ensure a secure attachment. Regarding claim 6, Wall further teaches of an embodiment with a plurality of anchoring pins (Figure 6, Reference Number 28) that are driven through anchor pin holes (Figure 6, Reference Number 27). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Oka et al. to have multiple anchoring protrusions and pins to ensure a secure attachment for the implant to the joint.

3. Claims 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oka et al. (USPN 5,314,478) in view of Wall (USPN 4,502,161) and further in view of de la Torre (USPN 5,368,602).

Regarding claims 7-9, Oka et al. teach of an implant for the repair of cartilage that is flexible, however they lack the teaching that the implant is a layer that can be rolled into an arc. De la Torre teach of a flexible surgical mesh (Figures 1 and 5) that is capable of being rolled into a cylindrical arc or squeezed to a form having a width that is 75% less than its normal relaxed width so that it can be easily delivered to the proper site during surgery (Column 4, Lines 16-20). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Oka et al. to have an implant that is capable of being rolled and squeezed so that it can be easily implanted.

4. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Oka et al. (USPN 5,314,478) in view of Li et al. (USPN 5,735,903).

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Regarding claim 12, Oka et al. teach of an implant for the repair of cartilage with a bearing surface, however they lack the teaching that the bearing surface comprises a synthetic hydrophilic polymer. Li et al. teach of a meniscal cartilage implant comprising biosynthetic collagen, where collagen is regarded as a polymer, that has a hydrophilicity and elasticity that is capable of simulating a natural meniscus. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Oka et al. to have the surgical cartilage implant made of a synthetic hydrophilic polymer so that it would simulate natural cartilage.


### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Crystal M Gilpin whose telephone number is 703-305-8122. The examiner can normally be reached on M-F, 9:00-5:00 (Second Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on 703-308-2111. The group fax phone number for the organization where this application or proceeding is assigned are 703-305-3590.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

cmg  
July 1, 2003

  
**Paul B. Prebilic**  
**Primary Examiner**